

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

SBC COMMUNICATIONS INC.,
SBC DELAWARE INC.
AMERITECH CORPORATION,
ILLINOIS BELL TELEPHONE COMPANY
d/b/a AMERITECH ILLINOIS, and
AMERITECH ILLINOIS METRO, INC.

Docket No. 98-0555

Joint Application for approval of the
reorganization of Illinois Bell Telephone
Company d/b/a Ameritech Illinois, and the
reorganization of Ameritech Illinois Metro, Inc.
in accordance with Section 7-204 of
The Public Utilities Act and for all other
appropriate relief.

**APPLICATION FOR REHEARING OF THE
COOK COUNTY STATE'S ATTORNEY'S OFFICE**

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NOW COME the People of Cook County, ex. rel. RICHARD A. DEVINE, State's Attorney of Cook County, pursuant to Section 200.880 of the Illinois Commerce Commission's ("Commission's" or "ICC's") Rules of Practice, 83 Illinois Administrative Code Section 200.880, and hereby submit this Application for Rehearing in the above-captioned proceeding and respectfully request that the Commission reconsider and amend its decision in this proceeding, pursuant to Section 10-113 of the Public Utilities Act. (The Act) 220 ILCS 5/10-113 et seq. In support of this Application, we state the following:

I. INTRODUCTION

On September 23, 1999 the Illinois Commerce Commission issued an Order approving the proposed reorganization of Ameritech Illinois subject to a variety of conditions. Order at 266. However, the Order incorrectly concludes that the Joint Applicant's have met their burden of proof and met the requirements of section 7-204 of the Public Utilities Act. First, while the Order correctly determined that 7-204(c) applies to this reorganization, the Commission should have selected a dollar amount and awarded savings to ratepayers. Order at 146. Second, the Order also failed to protect ratepayers from a rate increase as a result of the merger. Third, the Commission's Order incorrectly concluded that the proposed merger is not likely to have a significant adverse effect on competition. Illinois Commerce Commission ("ICC") Docket No. 98-0555, Order at 108.

The Commission should grant rehearing in order to modify its Order in accordance with the specific requirements of the Public Utilities Act, and to include the reasoned analysis which Illinois Courts have stated is necessary to legally sustain administrative orders and to which utility consumers are entitled. 220 ILCS 5/7-204, 5/10-113, 5/10-201. The Order should reconsider its approach to savings and allocate savings in the amount of \$471,584,762 to ratepayers. The Order should also reconsider its decision on adverse rate impact and continue the protections of the Alternative Regulation Plan with respect to rates. Finally, the Commission should reverse its determination that the merger is not likely to have a significant adverse effect on competition.

II. DISCUSSION

1. THE COMMISSION’S RULING ON SAVINGS VIOLATES THE PUBLIC UTILITIES ACT AND IS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE

1. The Commission’s Order Violates the Public Utilities Act

Because It Failed to Rule on the Amount of Savings Due

Ratepayers, to Correctly Define Savings, and to Adequately

Define Costs

a. The Commission Failed to Rule on the Amount of Savings Due Ratepayers

The Commission erred by delaying its ruling on the amount of savings allocable to Illinois ratepayers under Section 7-204(c) of the Act. That section provides, in part:

The Commission shall not approve a reorganization without ruling on: (i) the allocation of any savings resulting from the proposed reorganization; . . .

220 ILCS 5/7-204(c); 5/10-201(e)(iv)(C). The Act requires the Commission to make its determination on the savings allocation before it approves any reorganization of an Illinois public utility. The Commission did not rule on the amount of savings to be allocated between Ameritech shareholders and Illinois ratepayers, yet the Commission did approve the reorganization, thus failing to fulfill its statutory duties. ICC Docket No. 98-0555, Order at 148-150. See Initial Brief of the People of Cook County at 47-55; Brief on Exceptions of the People of Cook County at 36-43. Instead, the Commission deferred ruling on the specific amount to be allocated until the Alternative Regulation annual filing on April 1, 2000 and subsequent filings until an updated price cap formula has been developed in the five year review docket (ICC Docket No. 98-0252). Order at 148-150. It further violates the Act by choosing to address this issue in the Alternative Regulation annual filings and five year review proceedings, an action that is neither explicitly nor

implicitly allowed under Section 7-204(c).

b. The Commission Failed to Correctly Define Savings

The Order indicated that savings refers to an actual reduction in costs or expenses. ICC Docket No. 98-0555, Order at 147. However the Order should have adopted a more expansive definition of savings. The statute refers to any savings, not just expense savings. 220 ILCS 5/7-204(c); 5/10-201(e)(iv)(c). The legislature did not restrict savings to expense savings. As previously argued, the term savings encompasses revenue enhancements as well as expense savings. See: Brief on Exceptions on Re-Opening of the People of the State of Illinois, the Cook County State's Attorney's Office and the Citizen's Utility Board at 8-11 and proposed language at 13-15. Also, synergies should be equated with savings. Brief in Reply to Exceptions of the People of Cook County at 6.

3. The Commission Failed to Adequately Define Costs Recoverable From Ratepayers

The Order fails to provide specificity as to allowable costs to meet 7-204(c). 220 ILCS 7-204(c); 5/10-201(e)(iv)(c). ICC Docket No. 98-0555, Order at 147-48. The Commission determined that:

“As for the meaning of “costs”, the Commission agrees with Staff that none of the one-time merger costs which relate to the change in ownership of Ameritech, such as banker or brokerage fees, legal fees, or accounting fees, constitute legitimate costs for present purposes. It is only those costs directly associated with AI's provision of service which qualify under Section 7-204(c).” ICC Docket No. 98-0555, Order at 147.

However, this definition, as Commissioner Kretschmer noted in her dissenting opinion, is “incredibly vague” on which costs are recoverable from ratepayers. Dissenting Opinion of

Commissioner Ruth Kretschmer at 20. The list of Joint Applicant costs Commissioner Kretschmer questions includes, but is not limited to: i) costs for third party auditor or a third party tester; ii) costs related to filing compliance reports; iii) costs for bonus payments and retirement packages to Ameritech executives in excess of \$100 million; iv) costs from any penalties which may be imposed; and v) costs of transferring employees to/from Texas. Id. at 20.

The Joint Applicants should not be allowed to net the costs of conditions against savings. Any costs associated with conditions the Commission imposes in order to comply with Section 7-204 and the Illinois Public Utilities Act are the responsibility of the Joint Applicants. Brief in Reply to Exceptions of the People of Cook County at 6. While the Commission found Joint Applicants in compliance with 7-204(b), we maintain this finding was in error. The Commission erred in its approach to costs and was required to rule on costs prior to approving the reorganization. The Commission should grant rehearing and clarify allowable costs in this docket and not in some future docket.

d. The Commission's method of determining savings violates due process.

The Commission's Order interim method provides for savings to be flowed through the in the annual price cap filings. ICC Docket No. 98-0555, Order at 149. However, parties have only the opportunity to file written comments in response to these filings. Written comments do not provide an adequate opportunity to verify or challenge the savings numbers. Further, the Order does not make clear that the auditors work on savings will be available to the public. The Commission should reconsider its approach in this area to provide a meaningful opportunity to be heard and provide adequate information to the public.

2. The Commission's ruling on savings is not supported by substantial evidence.

a. Substantial Evidence Supports Awarding \$471,584,762 to Ratepayers

Substantial evidence in this case supported the adoption of Dr. Selwyn's approach to savings. The Commission should allocate savings in the amount of \$471,584,762 to ratepayers. GCI Ex. 1.2 at 17. 220 ILCS 5/10-201 (e)(iv)(A). Initial Brief of the People of Cook County at 49-55; Initial Brief on Re-Opening of the People of the State of Illinois, the Cook County State's Attorney's Office and the Citizen's Utility Board at 10.

As discussed earlier, the Order erred in failing to pick an amount with respect to savings in this docket. If on rehearing the Commission agrees that an amount needs to be picked in this docket, and the Commission rejects awarding \$471,584,762, there are alternative approaches. The Commission could also use its discretion and allocate 50% of savings to ratepayers resulting in a one-time rate reduction of \$235,792,381 million, to remain in place for ten years. See GCI Ex. 1.2 at 19; Initial Brief on Re-Opening of the People of the State of Illinois, the Cook County State's Attorney's Office and the Citizen's Utility Board at 10.

Another alternative is a hybrid approach, a modification of Cook County's original argument in this case. The Commission could fix savings based on an estimate for the initial years, then, when actual savings numbers are available, the Commission can adjust the annual savings amount to reflect the actual amounts. Initial Brief of the People of Cook County at 54-55; Brief on Exceptions of the People of Cook County at 38.

b. The Commission Erred in Allowing Joint Applicants Costs.

Substantial evidence supports the denial of any costs by the Joint Applicants due to the lack of clear record evidence as to costs incurred in the proposed merger, the Commission should

have denied the applicants the recovery of any costs. Initial Brief of the People of Cook County at 52. See proposed language: Brief on Exceptions on Re-Opening of the People of the State of Illinois, the Cook County State's Attorney's Office and the Citizen's Utility Board at 15-16.

3. The Commission Erred in Determining the Duration of the Flow Through of Savings

The Commission's Order needs to be clarified with respect to the duration of the flow through of savings. In the Introduction to the conditions section of the Order it indicates that unless specific termination dates are established, all conditions shall cease to be effective three years after closing. ICC Docket No. 98-0555, Order at 239. It is unclear if this limit applies to savings. In ruling on the allocation of savings, the Commission ignored substantial evidence that a 10 year flow through is appropriate. The Commission needs to allow an appropriate time frame in order to allocate savings. Brief in Reply to Exception of the People of Cook County at 7. See also Brief on Exceptions on Reopening of the People of the State of Illinois, the Cook County State's Attorney's Office and the Citizen's Utility Board at 6-9. Further, the 10 year period is reversible in the event that market conditions actually change from the present time. Initial Brief on Reopening of the People of the State of Illinois, the Cook County State's Attorney's Office and the Citizen's Utility Board at 9.

2. THE COMMISSION’S RULING ON RATES VIOLATES THE PUBLIC UTILITIES ACT

1. The Commission’s Order Violates Section 10-201(e)(iv)(C) of

The Public Utilities Act Because It Is Contrary To State Law

The Commission erred by not providing a rate cap on residential rates. ICC Docket No. 98-0555, Order at 123. The Order fails to ensure that the proposed reorganization will not likely result in any adverse rate impact on retail customers. 220 ILCS 5/7-204(b)(7); 5/10-201(e)(iv)(C).

Additionally, the Commission’s language in the Order is unclear and should be clarified. First, the Commission’s Order notes that “the rate freeze on the residential basket expires in 1999 under the Price Cap Order issued in Dockets 92-0448/93-0239”. ICC Docket No. 98-0555, Order at 123. However, the Commission’s Order also states that “because there is a rate cap in place and until such time as this Commission votes to allow an increase, we find that imposing a rate cap in this merger review is not necessary.” *Id.* These two sentences cannot be reconciled. The Commission should reconsider its Order and impose a residential rate cap to ensure that there is no adverse rate impact on retail customers as a result of this merger.

Further, the above language also conflicts with the Commission’s previous order in the Alternative Regulation Order (“Alt. Reg. Order”). ICC Docket No. 92-0448/93-0239 (Consol.).

The Alt. Reg. Order states:

After expiration of the initial five-year period of the plan, increases in basic residence services and in Band B and Band C residence usage may be made subject to the provisions of paragraphs 2 and 3, unless otherwise modified by the Commission. ICC Docket No. 92-0448/93-0239 (Consol.), Appendix A at 2, Section I.A.1.(b).

Paragraph 2 provides that:

The price for any individual service rate element may not be increased by more than the percentage of change in the price cap index for that year over the previous year plus 2%. ICC Docket No. 92-0448/93-0239 (Consol.), Appendix A at 4, Section I.A.2.(d).

This language cannot be reconciled with the language contained in the Merger Order described above. Without a residential rate cap in place under the Merger Order, residential ratepayers are at risk for a rate increase in violation of the Act. 220 ILCS 5/7-204(b)(7); 5/10-201(e)(iv)(C).

Finally, the Commission's language that "We are also aware that the five year review of the Alt Reg Plan is currently underway." is incorrect. ICC Docket No. 98-0555, Order at 123. Illinois Bell Telephone filed its Application for Review of the Alternative Regulation Plan on March 31, 1998. No testimony has been filed and no hearings have been held. Since the review of the Alternative Regulation Plan has not taken place, there is no guarantee that rates are just and reasonable as required by the Act. 220 ILCS 5/13-506.1; 5/10-201(e)(iv)(C).

2. The Commission's Findings On Adverse Rate Impact Are Not Supported by Substantial Evidence

The Commission erred in finding that the proposed merger is not likely to result in adverse retail rate impacts. ICC Docket No. 98-0555, Order at 122-123. Substantial evidence shows that the proposed reorganization is likely to result in adverse rate impacts on retail customers. Initial Brief of the People of Cook County at 43. As argued in our initial brief, the record indicates that the proposed reorganization is likely to result in adverse rate impacts on retail customers due to: (a) the need for SBC to recover the enormous \$13.2 acquisition premium it will be paying to Ameritech shareholders; (b) the need to financially support the merged companies National Local Strategy that SBC readily concedes will generate a negative cash flow for approximately ten years; (c) the substantial additional risks that the merged company will be taking on in

pursuing its National-Local Strategy, which could impair [SBCs] ability to raise necessary capital on reasonable terms or to maintain a reasonable capital structure; and (d) the reduced level of potential competition that the post-merger Illinois Bell will confront within its core local service market. GCI Ex. 1.0 at 53-61 (Selwyn). Further, the evidence demonstrates a continued reclassification of noncompetitive services as competitive prior to effective price constraining competition. Initial Brief of the People of Cook County at 43.

3. The Commission's Order Does Not Contain Analysis Sufficient to Allow an Informed Judicial Review of its Determination that the Merger will not have an Adverse Rate Impacts on Retail Customers in Violation of Section 10-201(e)(3) of the Act.

By failing to provide sufficient analysis to support its conclusion that: that the merger will not result in an adverse retail rate impacts, the Commission's Order violates Section 10-201(e)(iii), which requires a reviewing court to remand an order which "does not contain findings or analysis sufficient to allow an informed judicial review thereof..." 220 ILCS 5/10-201(e)(iii); ICC Docket No. 98-0555 at 122-125. The inconsistent language contained within the Merger Order lacks the requisite analysis needed to determine the Commission's reasoning on this issue in violation of the Act.

C. THE RULING ON COMPETITION IN THE COMMISSION'S ORDER VIOLATES THE PUBLIC UTILITIES ACT

1. The Commission's Order Does Not Contain Analysis Sufficient to Allow an Informed Judicial Review of its Determination that the Merger will not have an Adverse Effect on Competition or Rates in Violation of Section 10-201(e)(3) of the Act, Respectively.

The Commission failed to provide sufficient analysis to support its conclusion that SBC is not an actual potential competitor and that consequently that the merger will not have an adverse effect on competition in violation of the Act. ICC Docket No. 98-0555, Order at 94-108 Section 10-201(e)(iii) of the Act, requires a reviewing court to remand an order which “does not contain findings or analysis sufficient to allow an informed judicial review thereof...” 220 ILCS 5/10-201(e)(iii). It therefore lacks the legally requisite analysis needed to determine the Commission's reasoning on this issue. See also Brief on Exceptions on Reopening of the People of the State of Illinois, the Cook County State's Attorney's Office and the Citizen's Utility Board at 20-21.

Although the Commission need not make findings on every issue of fact, it is required to state facts essential to its rulings in a manner that enables the Appellate Court to intelligently review the decision. Business and Professional People for Public Interest v. ICC, 279 Ill. App.3d 824, 665 N.E.2d 553, 216 Ill.Dec. 493 (1st Dist. 1996), *appeal denied* 168 Ill.2d 584, 671 N.E.2d 727, 219 Ill.Dec. 560. Moreover, because the Act obliges the Commission to provide “findings and analysis sufficient to allow informed judicial review,” the Commission must set forth more reasoning and analysis than would be acceptable from a circuit court. CUB and the People of Cook County v. ICC, 291 Ill. App. 3d 300,304, 683 N.E.2d 938,943, 225 Ill. Dec. 435,440 (1st Dist. 1997). The Commission did not state facts essential to its legal ruling in a manner that allows the Appellate Court to intelligently review the decision.

2. The Commission erred in ignoring substantial evidence that the proposed reorganization will likely have a significant adverse effect on competition in violation of 7-204(b)(6)

The Order incorrectly concludes that SBC was not an actual potential competitor for local exchange services in Illinois. Order at 107. Substantial evidence showed that SBC was an actual potential competitor of Ameritech Illinois, and that the merger will likely have a significant adverse effect on competition in violation of the Act. 220 ILCS 5/7-204(b)(6). There are a variety of reasons SBC should be considered a potential competitor including its geographic proximity, national market strategy, extensive cellular presence in the Chicago MSA and the large number of national and multinational corporations headquartered in the Chicago area. See: Initial Brief of the People of Cook County at 28-43; Initial Brief on Reopening of the People of the State of Illinois, the Cook County State's Attorney's Office and the Citizen's Utility Board at 11-16.

The Commission erred in finding that the proposed merger is not likely to have a significant adverse effect on competition. Order at 108. Substantial record evidence showed that the proposed reorganization will likely have a significant adverse effect on competition in violation of 7-204(b)(6).

III. CONCLUSION

Cook County incorporates by reference all previous arguments made in its briefs and previous filings. For all the reasons stated in those briefs and for the reasons set out in this pleading, Cook County requests that the Commission reconsider its rulings on the issues of savings, rates, and competition and grant the relief requested herein.

Respectfully submitted,

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